IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8637 of 1999

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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E P ARUN - Petitioner(s)

Versus

JOSPHINABEN ANILBHAI CHRISTIAN & 1 - Respondent(s)

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Appearance :
MR BIPIN P JASANI for Petitioner No(s).: 1.

MR NILESH M SHAH for Respondent No(s).: 1.
MR MAYANK DESAI for Respondent No(s).: 1.
GOVERNMENT PLEADER for Respondent No(s).: 2.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 22/07/2005

ORAL JUDGMENT

1. This petition is directed against the award dated 13.1.1999 passed by the Labour Court, Vadodara in Reference No.(LCV) 711/94, whereby the petitioner has

been directed to reinstate the respondent on his original post with 70% backwages.

2. While admitting this matter this Court had granted stay qua only backwages and the order of reinstatement was not stayed. In spite of that, Mr. Shah states that the respondent is not reinstated.

3. The short facts of the case are as under:

3.1 The petitioner is a recognised private secondary school governed by the provisions of Gujarat Secondary Education Act, 1972. According to the petitioner the respondent was employed occasionally by Gujarat Regional Methodist Mission Church on purely adhoc basis to cope up with the additional workload due to holding of Board Examinations or due to the absence of the regular peon. Thereafter when the post was filled the case of the respondent was considered by the Selection Committee, but she was not selected. The respondent therefore raised a dispute which was referred to Labour Court, Vadodara for adjudication. The reference was numbered as Reference (LCV) No.711/94. The Labour Court, after hearing the parties, passed the award as stated hereinabove.

4. Mr. Jasani for the petitioner contended that the Labour Court has no jurisdiction to entertain the dispute raised by the respondent in view of the provisions of section 38 of the Gujarat Secondary Education Act, 1972. However, from the record I find that no such contention was raised before the Labour Court, nor before the Conciliation Officer. In that view of the matter I am of the opinion that it would not

be appropriate to allow to raise such contention for the first time at this stage. It is well settled that the question of jurisdiction, which was not raised at the first opportunity, cannot be allowed to raise in the subsequent proceedings. In the present case I do not find any justification to allow to raise such contention after a period of ten years.

5. Mr. Jasani next contended that the respondent has not completed 240 days and therefore on this ground alone the award requires to be quashed and set aside. In this regard the Labour Court has found that the respondent was working from 1992 to 1994 and all throughout she had been paid accordingly. No contrary evidence is produced on record by the petitioner. Therefore, the findings of the Labour Court based on materials on record cannot be assailed. Therefore, I do not accept the aforesaid contention of the petitioner.

6. Mr. Jasani next contended that the Labour Court has committed an error in awarding 70% backwages. I find substance in the contention of the petitioner inasmuch as in spite of the fact that she was working as agricultural labourer she was granted backwages. She was appointed on daily wage basis. She was not appointed on any regular post. No cogent reasons are assigned for award of backwages and therefore there was no justification for grant of backwages.

7. Mr. K.L. Pandya, learned AGP for respondent no.2 submitted that the respondent no.1 does not come under the direct payment scheme of their office for salary and the school authority is the sole authority responsible and liable for

appointment and salary of respondent no.1. Mr. Jasani could not controvert this submission made by Mr. Pandya.

8. In the premises aforesaid, the petition is partly allowed. The award in so far as it awards backwages is quashed and set aside. The rest of the award is confirmed. It is clarified that the petitioner shall be entitled to be reinstated with continuity of service. He shall be paid all the consequential benefits from the date of publication of the award. The award of the Labour Court is modified to the aforesaid extent. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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